IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4508 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANAIYALAL SHAMALDAS MODI

Versus

CHAIRMAN L.I.C. OF INDIA

Appearance:

1. Special Civil Application No. 4508 of 1999

MR ANIL N MEHTA for Petitioner

MR AK CLERK for Respondents

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: __/03/2001

C.A.V. JUDGEMENT

1. The petitioner was appointed as Peon on 1.7.1960 in the Life Insurance Corporation of India, Ahmedabad and was confirmed with effect from 1.1.1961. In short the petitioner raised two grievances. The first is regarding refusal to grant 4th stagnation increment and the second is that the punishment awarded in the Departmental Enquiry was too harsh and is violative of principles of natural justice.

2. It has been stated in the petition that the petitioner was granted first stagnation increment in 1985, the 2nd stagnation increment in 1987 and the third stagnation increment in 1989 by the Divisional Office of Life Insurance Corporation, Ahmedabad. Consequent upon revision of pay scales of Class : III and IV employees with effect from 1.8.1992 there has been provision for granting 4th stagnation increment to Class IV employees on completion of 2 years after drawing the 3rd such increment or first day of August, 1984 whichever is later. According to the petitioner the 4th stagnation increment became due at least from 1.8.1992 if not from 1.8.1991. However, the 4th stagnation increment was due to the petitioner on 1.8.1994 according to the instructions issued by the Central Office of the L.I.C. The petitioner was not granted 4th stagnation increment due on 1.8.1994 and 1.8.1995 without any reason. Thus, raising the first grievance the petitioner alleged that his record, as on 1.8.1994, was good hence 4th stagnation increment should have been granted to him with effect from 1.8.1994.

3. The second grievance of the petitioner is that the disciplinary proceedings were initiated against him in which punishment of stoppage of 3 increments with cumulative effect was awarded. The petitioner filed Appeal which was dismissed. The case of the petitioner is that the Appeal was not properly decided and that too it was not decided within limitation and principles of natural justice were not followed because all the points raised by the petitioner were not discussed by the Appellate Authority.

4. In the counter Affidavit the stand of the respondent is that the inquiry proceedings were conducted in accordance with law and that punishment was imposed after considering the gravity of misconduct on the part of the delinquent - petitioner hence interference on quantum of punishment during departmental enquiry cannot be interfered in exercise of jurisdiction under Article 226 of the Constitution of India.

5. Regarding 4th stagnation increment the stand of the respondent is that since the service record of the petitioner was not good the matter was deferred and when the record was found good the 4th stagnation increment was allowed with effect from 1.8.1997. It is also the stand of the respondent that stagnation increment cannot be claimed by the petitioner as of right.

6. I have heard the arguments of Shri A.N.Mehta for

the petitioner and Shri A.K.Clerk for the respondents.

7. The first point for consideration, therefore, is whether stagnation increment could be claimed as of right and whether it was refused without assigning any reason. Instruction 7 contained in Annexure : A makes the provision for stagnation increment. Inter-alia a Peon will be eligible for stagnation increment after every 2 years of service on reaching the maximum of the scale or the grant of last stagnation increment, as the case may be, subject to a maximum of four such increments. Instruction 7(2) provides that 4th such increment inter-alia in the case of peons will fall due for consideration after expiry of 2 years or 3 years, as the case may be, from the date on which the 3rd or 2nd stagnation increment was granted or on 1.8.1991 whichever is later. Instruction 7(3) provides that the release of stagnation increment in all cases shall be subject to the employee satisfying the existing conditions relating to the release of the stagnation increment.

8. It is thus clear from Instruction 7(3) that release of stagnation increment in all cases shall be subject to the employee satisfying the existing condition relating to the release of stagnation increment. It is, therefore, difficult to accept the contention that the stagnation increment should be granted to the petitioner as of right. Before claiming stagnation increment the employee has to satisfy the existing conditions relating to release of stagnation increment.

9. A Division Bench of this Court in L.P.A. No. 1050/97 - M.R.Shah v/s. Life Insurance Corporation of India, decided on 9.10.1997, had an occasion to consider the argument whether stagnation increment can be claimed as a matter of right. It was held by the Division bench that it, therefore, becomes crystal clear that entitlement to stagnation increment is not as a matter of course. It depends upon the assessment and analysis of the service record of the officers and, that too, by the highest administrative functionary like the Managing Director. It was further observed that it is clear from the aforesaid instruction that entitlement of stagnation increment to the officers shall be subject to their work, record being found satisfactory by the Managing Director. The same will apply for peons as well.

10. From the side of the petitioner another Division Bench verdict in L.P.A. No.1416 of 1997 - LIC of India v/s. B.K.Thakker, decided on 24.9.1998, was brought to my notice. However, at page : 2 of the Judgment the

Division Bench observed that this is being done in view of special circumstances of the case and the same is not to be treated as precedent. Thus, if the Division Bench directed in this case that stagnation increment should be granted it was not to be treated as precedent because such grant was in view of special circumstances of the case. Since there is clear direction that this judgment is not to be treated as precedent it cannot be successfully quoted as precedent by the petitioner.

11. From Para : 6 of the Counter Affidavit it is clear that 4th stagnation increment was released to the petitioner with effect from 1.8.1997. It is therefore incorrect to say that stagnation increment was not allowed to the petitioner. The cause of delay in releasing the stagnation increment is also explained in Para : 6 of the counter Affidavit. It is admitted in this para that 4th stagnation increment fell due to the petitioner on 1.8.1994. However, Memo was issued to the petitioner on 7.12.1994 calling for his explanation regarding refusal for work. On 28.9.1993 also the petitioner was issued warning memo for refusing to perform work. On 4.2.1995 written complaint was lodged against the petitioner in respect of the incident which occurred on 7.12.1994. The petitioner was issued a charge sheet on 13.5.1995 and the inquiry was instituted by the order dated 17.6.1995 and the inquiry commenced on 23.2.1996. In view of the fact that memos were issued to the petitioner and the disciplinary action was contemplated and later on initiated against the petitioner the consideration of sanction of stagnation increment was deferred by the Competent Authority. It is further deposed in this para that release of stagnation increment depends on various factors such as confidential report, Work records, Leave Records, Disciplinary Proceedings, etc. and if all these factors are satisfactory the stagnation increment should be released otherwise not. The 4th stagnation increment was deferred from 1.8.1994 to 1.8.1995 and again from 1.8.1995 to 1.8.1996. The petitioner was informed by letter dated 19.4.1996 that competent Authority has decided not to allow him to earn 4th stagnation increment on 1.8.1994 and 1.8.1995. However, subsequently it was released with effect from 1.8.1997. Consequently in view of instructions for grant of 4th stagnation increment and the observation of the Division Bench of this Court in L.P.A. No. 1050/97 (Supra) the petitioner is not entitled to any relief in respect of grant of 4th stagnation increment.

12. So far as the question of punishment in the

departmental enquiry is concerned four charges were framed against the petitioner. During enquiry all the charges were found established. The enquiry proceeded in accordance with rules and principles of natural justice. The Enquiry Officer found that charges No.1 and 4 were partly proved whereas charges No.2 & 3 were fully proved. The Disciplinary Authority, however, concurred with the findings of Enquiry Officer that charge No.2 & 3 were proved but did not concur with the finding of the Enquiry Officer that the charge No.1 & 4 were partly proved. The Disciplinary Authority found that all the charges were proved. Consequently, show cause notice was issued to the petitioner why punishment of stoppage of 3 increments with cumulative effect be not awarded. After considering the reply to show cause notice and the submissions made by the petitioner the Disciplinary Authority imposed penalty of reduction of 3 increments. The matter was taken in Appeal. The Appellate Authority considered all the points raised by the petitioner and upheld the order of the Disciplinary Authority. The Appeal was dismissed.

13. The contention has been that the punishment imposed is disproportionate to the charges established. I have given my thoughtful consideration to this contention and also to the charges and the stand of the petitioner before the Enquiry Officer, the Disciplinary Authority and the Appellate Authority. I do not find any merit in the contention that the punishment is disproportionate to the charges established against the petitioner. For gross insubordination on several occasions and for not maintaining the decorum of the office and for not obeying his superiors the petitioner was properly and adequately punished by the Authority concerned. The punishment cannot be said to be harsh or disproportionate to the charges established against him.

14. From the side of the petitioner the case of RAM VIJAY RAI V/S. CHAIRMAN, LIFE INSURANCE CORPORATION OF INDIA, reported in 1997 LAB.I.C. 2697 was referred in support of the contention that the order of punishment requires to be set aside. However, the facts of this case were all together different. In this case the punishment of dismissal was confirmed by the Appellate Authority without addressing himself to the points raised by the employee in the Memo of Appeal. It was on these facts held that such order is violative of Regulation : 46 and principles of natural justice. The Appellate order before me is contained in Annexure : H. A detailed order has been passed by the Appellate Authority in which it has considered all the points raised by the appellant and also considered the evidence on record

before dismissing the Appeal. The Appellate order is therefore not vitiated for non-observance of principles of natural justice.

15. It was further contended by the learned Counsel for the petitioner that 20 years old letters were accepted during enquiry proceeding on 23.2.1996 which has vitiated the inquiry. The Appellate Authority has rightly observed that these letters were taken on record to prove that the petitioner had knowledge of English and there has been no intention to establish the charges on the basis of the said letters. Consequently acceptance of these letters ranging 20 years old cannot be said to have vitiated the enquiry.

16. The Apex Court in STATE BANK OF INDIA V/S. SAMARENDRA KISHORE ENDOW AND ANOTHER, REPORTED IN (1994) 2 SCC 537 observed that imposition of appropriate punishment is within the discretion and judgment of the Disciplinary Authority. It may be open to the Appellate Authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reasons that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226. The power under Article 226 is one of judicial review. It is not an appeal from a decision but a review of the manner in which the decision has been made. The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the authority after affording a fair treatment reaches on a matter which it is authorised by law to decide for itself, a conclusion which is correct in the eyes of the Court. It further laid down that the Supreme Court can exercise equitable jurisdiction under Article 136 of the Constitution in matters of punishment but the High Court and the Tribunal has no such power or jurisdiction.

17. In PUNJAB STATE CIVIL SUPPLIES CORPORATION LTD. V/S. NARINDER SINGH NIRDOSH, REPORTED IN (1997) 5 SCC 62 the Apex Court again held that the direction of the High Court to reduce penalty of reversion to a penalty of stoppage of two increments was not warranted and observed that the High Court was wholly incorrect in reducing the punishment which is not at all warranted in law.

18. In GOVERNMENT OF A.P. V/S. B.ASHOK KUMAR, reported in (1997) 5 SCC 478, the Apex Court again observed that it was not proper for the Tribunal to interfere where the disciplinary imposed penalty of dismissal in a bribe case, though the penalty recommended was stoppage of three increments with cumulative effect. It was further observed and held that the finding of the

Tribunal that the imposition of penalty of dismissal shook its conscience was unwarranted and the Tribunal had no power to direct reconsideration of the matter. Since the power of the High Court under Article 226 is equivalent to the power of the Tribunal this observation of the Apex Court can equally be applied to the powers of the High Court for reduction of quantum of punishment.

19. The pronouncement of this Court in H.P.THAKORE V/S. STATE OF GUJARAT, reported in 1979 G.L.R. 109 is distinguishable on facts.

20. In the result I do not find any reasonable ground to interfere with the punishment imposed by the authority on the petitioner.

21. No other point was proposed. I, therefore, do not find any merit in this petition which is hereby dismissed with no order as to costs.

Date : March __, 2001 (D. C. Srivastava, J.)

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